

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:BO6

PLR-156719-06

Date: June 7, 2007

Distributing =

Controlled =

State =

Business A =

Business B =

x% =

Shareholder A =

Shareholder B =

Key Employee A =

Key Employee B =

Dear

This ruling is in reply to your representative's letter dated December 8, 2006 for rulings concerning the Federal income tax consequences of a proposed transaction. Additional information was submitted in letters dated January 29, February 22, April 4, May 24 and June 6, 2007. The material information submitted for consideration is substantially as set forth below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations and other data may be required as part of the audit process.

Moreover, no information provided by the taxpayer has been reviewed and no determination has been made regarding whether the transaction, as proposed: (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e)(2)(A)(ii) and § 1.355-7).

Distributing is a State corporation that is engaged in Business A and Business B, and has one class of common stock that has been issued to two shareholders. Financial information has been received which indicates that Distributing has had receipts and operating expenses representative of the active conduct of Business A and Business B for each of the past five years.

For what has been represented as valid business purposes, the taxpayer has proposed the following transaction:

- (i) Distributing will form Controlled as a State corporation and contribute the operating assets relating to Business B to Controlled in exchange for all of the stock of Controlled and the assumption by Controlled of certain of the liabilities related to the assets transferred ("the Contribution").
- (ii) Distributing will distribute all the outstanding shares of Controlled to Shareholder A and Shareholder B pro rata ("the Distribution").

- (iii) Within 30 days after the Distribution, Key Employee A and Key Employee B will purchase newly-issued treasury shares in Distributing representing a total of x% of the outstanding stock in Distributing.

The following representations have been made in connection with the proposed transaction:

- (a) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.
- (b) The five years of financial information submitted on behalf of Distributing is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- (c) Following the transaction, Distributing and Controlled will each continue the active conduct of its business, independently and with its separate employees, except that Distributing and Controlled will share the services of Shareholders A and B. Distributing and Controlled will each pay Shareholders A and B directly for the value of their services.
- (d) The distribution of the stock of Controlled is carried out for the following corporate business purposes: Separation of Business A from Business B in order to reduce risk to the assets of Business B and to enable Key Employee A and Key Employee B to obtain an equity interest in Business A. The distribution of stock is motivated, in whole or in substantial part, by one or more of these corporate business purposes.
- (e) The proposed transaction is not used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation or both.
- (f) The total fair market value of the assets transferred to Controlled by Distributing will equal or exceed the aggregate adjusted basis of the transferred assets.
- (g) The liabilities assumed in the transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.
- (h) The total adjusted bases of the assets transferred to Controlled by Distributing will equal or exceed the sum of (a) the total liabilities assumed (within the meaning of § 357(d)) by Controlled and (b) the total of any

money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.

- (i) The total fair market value of the assets transferred to Controlled by Distributing will exceed the sum of (a) the amount of liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (b) the amount of liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (c) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.
- (j) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- (k) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the distribution of the stock of Controlled.
- (l) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (m) No two parties to the transaction are investment companies as defined in §368(a)(2)(F)(iii) and (iv).
- (n) Immediately after the transaction (as defined in § 355(g)(4)) neither Distributing nor Controlled will be a "disqualified investment corporation" within the meaning of § 355(g)(2).
- (o) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).
- (p) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period

(determined after applying § 355(d)(6)) ending on the date of the Distribution.

- (q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

Based solely on the information and representations set forth herein, we rule as follows:

- (1) The Contribution followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be a “party to the reorganization” within the meaning of § 368(b).
- (2) Distributing will recognize no gain or loss upon the transfer to Controlled of those assets relating to Business B in exchange for Controlled stock and the assumption by Controlled of liabilities related to the assets transferred (§§ 361(a) and 357(c)).
- (3) Controlled will recognize no gain or loss on the receipt of the assets relating to Business B in exchange for Controlled stock (§ 1032(a)).
- (4) The basis of each asset received by Controlled will equal the basis of that asset in the hands of Distributing immediately before the Contribution (§ 362(b)).
- (5) The holding period of each asset received by Controlled will include the period during which Distributing held that asset (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) any shareholder of Distributing on the Distribution (§ 355(a)(1)).

- (8) The aggregate basis of Controlled stock and Distributing stock in the hands of the shareholders will equal the aggregate basis of the Distributing stock held immediately prior to the transaction, allocated between the Controlled and Distributing stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) and § 358 of the Code.
- (9) The holding period of the Controlled stock received by the shareholders of Distributing will include the period during which the Distributing stock was held (§ 1223(1)).
- (10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 1.312-10(a).

No opinion is expressed about the tax treatment of the proposed transactions under other provisions of the Code or regulations or about the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the proposed transaction is used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the proposed transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

This ruling is directed on to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any Federal income tax return to which it is relevant.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alfred C. Bishop

Alfred C. Bishop
Branch Chief, Branch 6
(Corporate)